

THE
CIVIL CODE
OF THE
HAWAIIAN ISLANDS,

PASSED IN THE YEAR OF OUR LORD

1859:

TO WHICH IS ADDED

AN APPENDIX,

CONTAINING

LAWS NOT EXPRESSLY REPEALED BY THE CIVIL
CODE; THE SESSION LAWS OF 1858-9; AND
TREATIES WITH FOREIGN NATIONS.

PUBLISHED BY AUTHORITY.

HONOLULU:
PRINTED FOR THE GOVERNMENT.
1859.

EXHIBIT B

ARTICLE XL--OF SUMMARY PROCEEDINGS TO RECOVER POSSESSION OF LAND IN CERTAIN CASES.

SECTION 939. When any lessee of any lands or tenements, or any person holding under such lessee, shall hold possession of the demised premises, without right, either by its own limitation or by a notice to quit of at least ten days, the person entitled to the premises may be restored to the possession in the manner hereinafter provided.

SECTION 940. The person entitled to the possession of the premises, may apply to any police or district justice for a writ, in the form used for an original summons in common civil actions before such justices, in which the defendant shall be summoned to answer the complaint of the plaintiff, for that the defendant is in the possession of the lands or tenements in question, describing them, which he holds unlawfully, and against the right of the plaintiff, and no other declaration shall be recognized.

SECTION 941. Such summons shall be served either:

1. By delivering to the tenant, to whom it shall be directed, a true copy thereof, and at the same time showing him the original, or,
2. If such tenant be absent from his last or usual place of residence, by leaving a copy thereof at such place, with some person of mature age residing in the premises.

SECTION 942. The summons shall be returnable within such time as shall appear reasonable to the justice, not less than three, nor more than five days; and the suit shall be conducted like other civil actions before such justices.

SECTION 943. If the defendant shall be defaulted, or if on the trial it shall be proved to the satisfaction of the justice, that the plaintiff is entitled to the possession of the premises, he shall have judgment for the possession thereof, and for his costs, and execution shall issue accordingly.

of the justice before whom motion is made for judgment upon the award, may take an appeal to the Supreme Court, in *banco*, upon filing written notice of his intention so to appeal, within five days after the rendition of such decision.

ARTICLE XXXIX--OF THE TRIAL OF CAUSES IN CASE OF THE DISQUALIFICATION OF THE CIRCUIT JUDGES, POLICE AND DISTRICT JUSTICES.

SECTION 937. When for any cause any police or district justice is legally disqualified to hear and determine any case, civil or criminal, which would by law come under his jurisdiction, the same may be brought by direct suit or complaint, before any circuit judge of the circuit in which such police or district justice holds office, to be heard and determined by such circuit judge, in like manner as if it had been brought before him by appeal. The same costs shall be charged in such case, as would have been charged if the suit had been brought before the police or district justice.

SECTION 938. When any party deems himself aggrieved by the decision of any police or district justice, in any case, civil or criminal, and the circuit judge to whom appeal might be taken, is legally disqualified to hear and determine the case, said party may take an appeal direct to the Supreme Court, or to the Circuit Court of the circuit in which he resides, upon conforming to the conditions upon which appeals may be taken to a circuit judge at chambers.

The writ of possession shall issue to the Marshal, or to any sheriff or constable of the city or district where the premises are situated, commanding him to remove all persons from said premises, and to put the plaintiff, or his agent, into the full possession thereof.

SECTION 944. The officer to whom such warrant for delivering possession shall be directed and delivered, is hereby required to execute the same according to the tenor thereof.

SECTION 945. Whenever a warrant shall be issued as aforesaid for the removal of any tenant, the contract for the use of the premises, if any such exists, and the relation of landlord and tenant between the parties, shall be deemed to be cancelled and annulled.

SECTION 946. The issuing of such warrant of removal shall be stayed in the case of a proceeding for the non-payment of rent, if the person owing such rent, shall, before such warrant be actually issued, pay the rent due, and all the costs and charges of the proceedings; or give such security for the payment thereof, within five days, as shall be satisfactory to the justice, or to the plaintiff.

SECTION 947. Any justice before whom a suit may be pending for the recovery of premises may, upon the request of either party, adjourn the hearing of the suit, for the purpose of enabling such party to procure his witnesses, when it shall appear to be necessary; but such adjournment shall, in no case, exceed five days.

SECTION 948. Either party may appeal from the judgment of the justice, at any time within twenty-four hours after the entry of the judgment, to any circuit judge, or to the Supreme Court; but the appellant shall, before the allowance of his appeal, file with the justice a bond, with sufficient surety or sureties, to the adverse party, in the sum of one hundred dollars, with condition to prosecute his appeal without delay, and to pay all the costs arising from the appeal, in case the decision of the justice is affirmed.

SECTION 949. When the defendant is proceeded against for the non-payment of rent, and the justice decides that the plaintiff should have

possession, the defendant shall not be allowed to keep possession and take his appeal, unless he first gives a bond to the plaintiff, with good and sufficient surety or sureties, to pay all rent that may accrue and become due after the appeal, provided it shall be finally determined that the plaintiff was entitled to the possession.

SECTION 950. If any tenant, being in arrear for rent, shall desert the demised premises, and leave the same unoccupied and uncultivated, any police or district justice may, at the request of the landlord, and upon due proof that the premises have been so deserted, by such tenant, leaving rent in arrear, go upon and view said premises; and upon being satisfied, upon such view, that the premises have been so deserted, he shall affix a notice in writing upon a conspicuous part of the premises, requiring the tenant to appear and pay the rent due, at some time in the said notice specified, not less than ten, nor more than thirty days after the date thereof.

SECTION 951. At the time specified in such notice, the justice shall again view the premises, and if the tenant shall appear and pay the rent, or deny that any rent is due to the landlord, all proceedings shall cease. If, upon the second view, the tenant or his agent shall not appear and pay the rent in arrear, or deny that any rent is due, then such justice may put the landlord into possession of the premises; and any demise of the premises, to such tenant shall, from thenceforth, become void.

SECTION 952. An appeal from the proceedings of any justice under the last two preceding sections, may be taken by the tenant to any circuit judge at chambers, or to the Supreme Court, at any time within one month after possession delivered, by serving notice in writing thereof upon such justice, and by giving a bond in the sum of one hundred dollars, with good and sufficient sureties, to be approved by the justice, to pay to the landlord all costs of such appeal which may be adjudged against the tenant; and thereupon such justice shall send up a copy of the proceeding had before him, within ten days after appeals.